

Proposed technical correction:

SECTION ____.(a) G.S. 39-33 and G.S. 39-34 are repealed.

[§ 39-33. Method of release or limitation of power.]

A release or limitation of a power of appointment with respect to real or personal property exercisable by deed or will or otherwise may be effected, if such power may be released or limited under the laws of this State, by the execution by the holder of such power of an instrument in writing stating that the power is released or limited to the extent set forth therein, and the delivery of such instrument to any person who might be adversely affected if such power were exercised or to the fiduciary or one of the fiduciaries, if any, having possession or control of the property over which the power is exercisable. (1943, c. 665, s. 1.)

§ 39-34. Method prescribed in § 39-33 not exclusive.

The method of release prescribed in G.S. 39-33 is not exclusive, and this Article shall not invalidate or be construed to invalidate any instrument or contract of release or limitation of a power not executed and delivered in the manner provided in G.S. 39-33 or as invalidating any other act of release or limitation of a power, whether such instrument, contract or act has been heretofore or may be hereafter executed, delivered or done. (1943, c. 665, s. 2.)]

SECTION ____.(b) G.S. 39-35 is recodified as G. S. 31D-5-505.

[§ 39-35. Requisites of release or limitation as against creditors and purchasers for value.]

No release or limitation of a power of appointment after March 8, 1943, which is made by the owner of the legal title to real property in this State shall be valid as against creditors and purchasers for a valuable consideration until an instrument in writing setting forth the release or limitation is executed and acknowledged in the manner required for a deed and recorded in the county where the real property is. (1943, c. 665, s. 3.)]

SECTION ____.(c) G.S. 39-36 is recodified as G.S. 31D-4-403(b).

SECTION ____.(d) As amended by subsection (c) of this section, G.S. 31D-4-403 reads as rewritten:

"§ 31D-4-403. Method of release.

(a) A power holder of a releasable power of appointment may release the power in whole or in part as follows:

- (1) By substantial compliance with a method provided in the terms of the instrument creating the power.
- (2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by an instrument manifesting the power holder's intent by clear and convincing evidence. [(2015-205, s. 3(a).)]

(b) [§ 39-36. Necessity for actual notice of release or limitation to bind fiduciary.]

No fiduciary having possession or control of property over which a power of appointment is exercisable shall be bound or affected by any release or limitation of ~~such~~ the power without actual notice thereof." [(1943, c. 665, s. 4.)]

SECTION ____.(e) The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all explanatory comments of the drafters of this section as the Revisor may deem appropriate.

Explanation: Additional request from the Estate Planning and Fiduciary Law Section. Repeals provision essentially duplicated by G.S. 31D-4-404 and a provision that was corollary to it and recodifies two other sections in Chapter 39 into Chapter 31D.

Background material:

Proposed drafters' comment to an earlier version, which would have recodified both G.S. 39-34 and G.S. 39-35 as new subsections in G.S. 31D-4-403:

North Carolina Comment:

Subsections (b) and (c) were added in North Carolina. These two subsections are substantially the provisions of former G.S. 39-34 and 39-35. These two subsections have been moved from the General Statutes chapter on Conveyances to the Uniform Power of Appointment Act, so that provisions related to powers of appointment are contained in a single chapter, instead of being scattered throughout the statutes. In addition, G.S.39-33 was repealed, as it was duplicative.

From: Rebecca Smitherman [<mailto:rsmitherman@craigejenkins.com>]
Sent: Thursday, June 02, 2016 2:11 PM
To: Bly Hall (Bill Drafting)
Cc: Linda Johnson; Floyd Lewis (Bill Drafting); Graham D. Holding Jr. (gholding@rbh.com)
Subject: RE: Tech Corr 31D-4-403 RLS RLS

Here it is. I'm sorry for sending the wrong one earlier. I need to work with Graham to get you the NC Comment.

Rebecca

From: Bly Hall (Bill Drafting) [<mailto:Bly.Hall@ncleg.net>]
Sent: Thursday, June 02, 2016 1:49 PM
To: Rebecca Smitherman
Cc: Linda Johnson; Floyd Lewis (Bill Drafting)
Subject: RE: Tech Corr 31D-4-403 RLS RLS

If there's an updated version, I need it.
Bly

From: Rebecca Smitherman [<mailto:rsmitherman@craigejenkins.com>]
Sent: Wednesday, June 01, 2016 9:45 PM

To: Bly Hall (Bill Drafting)
Cc: Linda Johnson; Floyd Lewis (Bill Drafting)
Subject: Re: Tech Corr 31D-4-403 RLS RLS

Hi, Bly,

I think it is pretty straightforward but I think I sent the wrong version. We can make it a bit less duplicative. I'll get you a revision in the morning.

Rebecca

Sent from my iPhone

On Jun 1, 2016, at 6:48 PM, Bly Hall (Bill Drafting) <Bly.Hall@ncleg.net> wrote:

Just looking quickly over it, it seems straightforward. I'll look at it more closely tomorrow and let you all know if I have any questions.

bly

From: Linda Johnson [<mailto:ljohnson@ssjlaw.net>]
Sent: Wednesday, June 01, 2016 12:58 PM
To: Bly Hall (Bill Drafting)
Cc: Rebecca Smitherman
Subject: FW: Tech Corr 31D-4-403 RLS RLS

Bly,

Attached please find one additional technical correction we would like for you to consider.

Thank you,
Linda

Linda Funke Johnson
Attorney at Law (NC, HI, CT)

<image001.jpg>

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From: Rebecca Smitherman [<mailto:rsmitherman@craigejenkins.com>]
Sent: Wednesday, June 01, 2016 11:00 AM
To: Linda Johnson <ljohnson@ssjlaw.net>
Subject: Tech Corr 31D-4-403 RLS RLS

This is the correction. Did I send it to you already?

Rebecca

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